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The efforts of states to differentiate regulatory treatment among districts and schools are examined in this paper. Data were derived from case studies of four state programs: Kentucky's Educational Deficiency Program of receivership for troubled districts; New Jersey's Plan to Intervene in Deficient School Districts; South Carolina's Flexibility through Deregulation Program; and Washington State's Schools for the 21st Century Program that includes regulatory waivers. Following the introduction, the second section examines the evolution of differential treatment as a state education agency strategy and its potential benefits. Four working models of state differential treatment--two sanction programs and two regulatory waiver programs--are described in the third section. The final section examines how the programs function to address the purposes served by such programs. A conclusion is that differential treatment has little effect on long-term school improvement and may not assist in tailoring state policy to local needs or in providing reasonable oversight. Differential treatment, as a strategy for accommodating local diversity in meeting its goals, must be part of a systemic reform strategy that includes a review of how state agency resources can best be used. (29 references) (LMI)

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CONSORTIUM FOR POLICY RESEARCH IN EDUCATION

Takeover and Deregulation:

Working Models of New State and Local Regulatory Relationships

Susan H. Fuhrman
Richard F. Elmore

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Takeover and Deregulation

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April 1992

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Abstract

This paper focuses on the efforts of states to differentiate regulatory treatment among districts and schools. In reshaping accountability to focus more on outcomes, states are re-examining traditional regulation of schooling. In the process, they are deliberating the extent to which extraordinary oversight and enforcement is necessary for some districts and the degree to which deregulation may be appropriate for others.

The paper draws on case studies of four state programs: Kentucky's Educational Deficiency Program of receivership for troubled districts; New Jersey's Plan to Intervene in Deficient School Districts; South Carolina's Flexibility through Deregulation Program; and Washington's Schools for the 21st Century Program which includes regulatory waivers.

The four programs exemplify the extremes of differential regulatory treatment: takeover and deregulation. The programs also represent key design variations of both approaches. Kentucky's program kept local leadership intact while New Jersey's approach focuses on the substitution of state-appointed leadership; South Carolina's deregulatory program features a blanket up-front exemption for eligible schools while Washington's deregulation effort provides rule-by-rule waivers upon request of project sites.

The paper examines the evolution of state differential treatment approaches and their potential benefits. It also discusses the fit between how the programs function and the range of purposes they might serve, as well as implications for further research.

The consequences of differential treatment strategies are highly dependent on their design. The takeover and intervention programs focusing on district management appear to have had little direct impact on schools, at least initially. Whether state intervention can lead to long-term improvement depends on the extent to which such programs actually focus on school-level change.

Deregulatory programs that feature automatic exemption seem more stimulative of creative thinking, other things being equal, than rule-by-rule request programs. However, no final conclusions on the effects of deregulation can be reached until schools that are not successful to start with become eligible. It may be schools most in need of improvement that benefit most from flexibility and autonomy.

Finally, the effects of the approaches are also dependent on other aspects of state policy. The consequences of intervention strategies depend, for example, on the capacity of the state agency, on whether it can assist or broker meaningful help. The stimulus provided by deregulation depends on the extent to which regulation in the state is viewed as intrusive. While not a panacea, differential treatment is worth continued experimentation and study in the context of multi-faceted education reform.

This paper draws from four case studies dealing with different approaches to regulation of schooling. Each case study was designed to be either used separately or in conjunction with this paper.

The basic facts of the separate cases are incorporated into this analytical paper. However, the cases include little explicit analysis, and are as descriptive as possible. Therefore, the cases may be used to provoke independent analysis and discussion of regulatory issues. For information on obtaining these papers, please see the inside cover of this publication.

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Introduction

One way to view the education reform movement of recent years is as an effort to redefine traditional roles in education policy and practice. The teacher is encouraged to be less of a "teller" and more of an enabler of student learning, less of an isolated practitioner and more of a colleague, less of an implementor of policies made elsewhere and more of a decision-maker. Administrators are encouraged to share power with teachers and immerse themselves more in practice. Students are urged to take more responsibility for their own learning, and employers and universities are counseled to give them greater incentives for assuming such responsibility.

In a similar vein, the relationships among levels of educational governance are under scrutiny. An increasingly prevalent reform vision locates most decisions about specific curricula, the organization of instruction, and pedagogy at the school; coordination and facilitation of school-level decisions at the district; and instructional leadership and accountability based on ambitious outcome goals at the state (NGA 1990; Business Roundtable 1990; Smith and O'Day 1991). While debate rages about whether instructional leadership might come from the national level (Smith, O'Day and Cohen 1990), the redefinition of responsibilities among states, localities and schools is in progress—with all the fits and starts and widespread variation one might expect to accompany complex change in a diverse nation.

This paper focuses on one aspect of changing relationships in educational governance: the efforts of states to differentiate regulatory treatment among districts and schools. In reshaping accountability to focus more on outcomes, states are re-examining traditional regulation of process and practice. They are deliberating the extent to which extraordinary oversight and enforcement is necessary for some districts and the degree to which deregulation may be appropriate for others.

The paper draws on case studies of four state programs: Kentucky's Educational Deficiency Program of receivership for troubled districts (Fry, Fuhrman and Elmore 1992); New Jersey's Plan to Intervene in Deficient School Districts (Dolan 1992); South Carolina's Flexibility through Deregulation Program (Fuhrman, Fry and Elmore 1992); and Washington's Schools for the 21st Century Program which includes regulatory waivers (Fry, Fuhrman and Elmore 1992). The cases were chosen to represent examples of differential treatment strategies and therefore to illustrate the design and implementation issues associated with such strategies. The four programs exemplify the extremes of differential regulatory treatment: takeover and deregulation. The programs also represent key design variations of both approaches. Kentucky's program kept local leadership intact while New Jersey's approach focuses on the substitution of state-appointed leadership; South Carolina's deregulatory program features a blanket up-front exemption for eligible schools while Washington's deregulation effort provides rule-by-rule waivers upon project site request.

The next section of the paper examines the evolution of differential regulatory treatment as a strategy of state education agencies. Then we examine the potential benefits of differential treatment approaches. In the following section, we describe the four "working models" of state differential treatment, the two sanction programs and the two regulatory waiver programs. The final section examines how the programs function to address the purposes differential treatment strategies might serve. It also discusses the implications of our findings for the design of differential treatment strategies and for further research.

Evolution of Differential Treatment Strategies

For many years states have varied the treatment they accord localities as an inevitable response to local diversity. Funding formulas have responded to differences in local wealth; administrative waivers have been granted to districts having temporary trouble coming into compliance with regulations, such as those governing the placement of teachers in the fields in which they are certified. State policymakers are most comfortable distributing benefits to everyone fairly equally (McDonnell and McLaughlin 1982). But following the federal example and prodded by specialized constituency groups modelled on federal counterparts, states have increasingly developed categorical programs to meet special student needs that are unevenly distributed across districts (Fuhrman 1988).

Differential treatment is now moving to a new stage, characterized by the use of performance measures, rather than local needs or compliance with process regulation, to make distinctions among districts. Four strategies are seeing growing use by state agencies: (1) performance-based accreditation, where outcome measures are added to compliance measures as conditions for school and district certification, and oversight is varied according to success in meeting the criteria; (2) rewards and sanctions related to various levels of performance; (3) targeted assistance to low-performing districts; and (4) regulatory flexibility to support innovation in some schools and districts.

The newer approaches to differential treatment reflect the increased availability of outcome measures. By 1989-90, 47 states required that local public school districts test students at some point(s) during their elementary and secondary years; 39 of those states required the use of state-developed, state-selected or state-approved tests to meet testing mandates. Most of the states used the tests to monitor local performance and to provide accountability (Coley and Goertz 1990). Other measures, such as student graduation from high school (or the inverse, dropping out) and the continuation of students into post-secondary education, are also more frequently collected and used by states for accountability purposes (OERI 1988; Kaagan and Coley 1989; Kirst 1990).

Outcome measures provide state officials with an "objective" means of discriminating among districts. Their comfort with using these measures as a basis for differentiating treatment may vary. The legitimacy accorded the outcome measures may depend on the actual tests used, for example, whether they are state-developed tests tied to curricular goals or norm-referenced standardized tests. It may also depend on the extent to which the state has confidence that other measures, such as dropout and attendance rates, are consistently and accurately measured (Williams 1987). Nonetheless, these measures are seen by state agency staff as far superior to more subjective indicators of local progress, such as local self-reports of compliance with state regulations and the conclusions of periodic inspection teams that verify the accuracy of self-reports (Fuhrman 1990).

A second impetus behind the growing popularity of differential treatment strategies is the expanded pressure on state agencies as a result of state reforms. Growing responsibilities for new testing programs, curricular frameworks, teacher credentialling and evaluation efforts and the like have stretched agency staff. Yet at the same time, staff resources have not kept pace, with many agencies experiencing actual cuts in positions. Pressured staff would *de facto* concentrate more on some districts or schools than on others; differential treatment strategies provide explicit priorities for allocating agency time (Fuhrman 1990).

Third, performance-based differential treatment strategies broaden the portfolio of accountability options available to states. Outcome measures, unlike compliance measures, are continuous, so policymakers can make finer distinctions among schools and districts and can employ ranges of varied treatment. Rather than classifying schools into the general categories of compliance and non-compliance, they can group schools according to quartiles, quintiles or deciles of performance and design assistance, oversight or reward strategies for each group. With visible, easily explained outcome measures as a basis for decisions, state policymakers can also consider more extreme varieties of treatment. It's easier to justify severe sanctions, such as state takeover, for example, for non-performance and non-compliance than it is for non-compliance alone. Since, the ultimate sanction states have historically possessed, withholding of state funds, is so politically difficult that it has virtually never been exercised, policymakers are attracted to other types of severe sanctions that performance measures make more feasible (Cohen 1990).

Finally, the newer differential treatment approaches are consistent with the larger trend of shifting state accountability from a process focus to an outcome focus. Since the differential treatment strategies are, in effect, mechanisms that spring from the emphasis on performance, they should become more prevalent as the outcome-accountability link becomes firmer. And, there is every indication that such a shift will increasingly take hold. States are likely to invest more effort into better assessments that would increase the legitimacy of outcome measures. Furthermore, there is a growing possibility of national examinations which states could use for accountability.

Above all, the new differential treatment approaches are attractive to policymakers because they appear to provide solutions to some recurring dilemmas of the state-local relationship. Those issues are addressed in the next section.

Potential Benefits of Differential Treatment Strategies

Varying the attention and resources accorded to districts and schools based on their performance would appear to address at least three issues in state-local relations. Stated as questions, the issues are: How can school improvement be encouraged? How can state leadership be tailored to local needs? And how can reasonable oversight be provided?

Encouraging School Improvement

In theory, most state educational statutes and regulations (other than those narrowly construed as health and safety or fiscal accountability requirements) are aimed at school improvement. If the state puts a ceiling on class size, it is because policymakers believe that lower class sizes are associated with good practice. In practice, most statute and regulation deals with minimal standards, with providing a floor, not a goal, for practice. High, or leading edge, requirements for practice or performance mean that for some period of time, and perhaps a lengthy period, most schools in a state would be below standard. This situation is typically viewed as politically intolerable. Also, high standards are likely to be countered by local requests for more resources. Further, in many states, the imperative for policymakers has been to do something about the schools and districts at the bottom of the state's achievement distribution which can make the state look bad in comparison to others. Only recently have concerns about national competitiveness suggested that the entire distribution needs to be moved up several notches.

The political factors that promote a focus on the minimal or the lowest common denominator standard are, ironically, reinforced by the findings of educational research that school improvement is a unique, site-based endeavor. Reasoning that excellence cannot be mandated, educators have urged policymakers to minimize requirements. So the mandates around which political consensus can be built are likely to be those viewed as least intrusive. One way to minimize intrusion is to construct mandates so that they are already exceeded by most schools and districts.

Another way to minimize intrusion is for state requirements to focus on outcomes and to leave process and practice up to schools. As we have indicated, we believe that states are moving in that general direction. In the meantime, they undertake a variety of other strategies to encourage, rather than mandate, improvement. For example, providing monetary inducements for schools to undertake worthy programs—such as the establishment of broadly representative, systematic planning processes; providing guidelines—such as recommended curriculum frameworks that model good instructional approaches; and supporting academies, workshops, and other staff development activities.

Differential treatment approaches are an additional, and potentially more powerful, means of encouraging school improvement. If process regulations impede improvement

for some schools and districts, why not remove them, just for those schools and districts? Until such time that legitimate outcome accountability makes all, or most, process regulation unnecessary, the regulations could remain in effect for those judged as needing control. If some schools and districts are particularly troubled, why not devise intensive intervention strategies? If some schools are doing very well, why not reward them with extra dollars thereby motivating other schools?

By varying the emphasis on mandates vs. encouragement strategies, states can avoid the dilemma posed by permitting minimal standards to be the entire embodiment of state policy goals. States can lead practice for some through rewards and regulatory flexibility that encourages school-designed improvement and assist others who need help to improve.

Tailoring Treatment to Local Needs

A recurring problem closely related to the issue of leading practice is how to design state policy in a way that accounts for the sizeable diversity among schools and districts. No matter how clear the standard set by a state or how well-designed the inducement to undertake a specific program, local response is varied (McLaughlin 1987; Elmore and McLaughlin 1988).

Variation occurs because diverse communities differ in the applicability of the state policy to their own programs and priorities. They translate state policy into their own policies and practices in ways that suit their needs, shaping and adapting it in the process. Some resist, some comply half-heartedly, some anticipate and exceed state goals (Fuhrman, Clune and Elmore 1988).

State policymakers have tried to address this dilemma in several ways. They consult with local policymakers and educators in developing policy to get a sense of local needs. States use inducements as well as mandates because inducements will draw in the more willing participants, who might then model new programs in ways that make them more attractive to the less willing. As policymakers have become more familiar with the vagaries of implementation, they have permitted more realistic and longer phase-in periods for new policy approaches to allow time for local adjustment. Most importantly, they tolerate some variation, because they really have no choice.

Differential treatment strategies are a means of anticipating variation and building it into state policy approaches. If some policies and programs are not suited to certain districts, those districts might be exempted and permitted to pursue alternate means of reaching state goals. If some districts are actively resisting state policies believed to be critical, they might warrant more intensive oversight or even intervention. If some districts want to implement a policy, but don't have the wherewithal or capacity to do it well, they might be offered assistance.

By differentiating the stress on compliance and the means of working toward compliance, states may more efficiently achieve their purposes. Differential treatment provides a means of tailoring state policy to local needs that might help districts and schools to better achieve the educational intentions of those policies.

Providing Reasonable Oversight

A third persistent problem faced by state policymakers is how to assure that schools and districts conform to state law and regulation. Even though they will tolerate variation, policymakers want to limit the range of variation sufficiently to know that mandates they consider critical are being enforced.

Even if outcome accountability were to become more prevalent, states would need some way of knowing that remaining process regulations—such as health and safety, facilities and civil rights—were being met. In the absence of true outcome accountability, states have volumes of process regulations, to enforce dealing with everything from appropriate placement of teachers, to adequate planning processes, to the provision of adequate course offerings, to class size.

Several challenges face state officials responsible for enforcing regulation and pose corresponding problems for the regulatees. One that lies squarely in the heart of the state-local regulatory relationship concerns the credibility of the regulations. The extent to which regulators and regulatees share a belief that the regulations are worth enforcing, and worth the process of inspection that comes with enforcement, may be particularly questionable in education. Lack of agreement on what practices subject to regulation promote good schooling and how to measure and observe the presence of such practices pervades the schooling endeavor.

Traditionally, what regulators could inspect were paper trails indicating that practices conformed to regulation, not the practices themselves. The lack of fit between the goals of regulation and what regulators can measure leads to a situation that has been termed "regulatory unreasonableness," characterized by formalistic, legalistic, standardized inspection processes and frequently severe paperwork burdens (Bardach and Kagan 1982; Bardach 1986; Kagan 1986).

Furthermore, the formal insistence on compliance with minimal standards, regulations that are clearly intended for the "bad apples"—those districts that would not, for instance, offer science if not mandated to do so—is annoying to the vast majority of local educators. It is not just the fact that they do offer science and may resent having to undertake the paperwork to demonstrate it, but also that they may find ways of offering science in creative ways, perhaps in combination with other subjects, that make it difficult to demonstrate the extent of their science offerings without even more extensive paperwork.

Finally, the capacity of state regulators to detect non-compliance is often doubtful. The issue extends beyond the growing constraints on agency staff noted above. No agency has ever been sufficiently staffed to permit lengthy, frequent site visits; hence inspection typically includes data reporting and monitoring, periodic self-reports and brief, periodic visits by regulators. Agencies and districts alike struggle with the extent to which paper reports adequately portray school activities and the kinds and extent of evidence regulators can garner in their brief visits to verify the adequacy of reports. Not only are standards likely to be minimal, but efforts to verify conformance to the standards are likely to be minimal as well.

Differential treatment strategies provide some solutions to the dilemma of regulatory unreasonableness. If some schools and districts are exempt from regulation, they need not be inspected on those regulations. Regulators could devote more time to those who remain regulated. Paperwork could be limited for the exempt and better verified for the non-exempt. Not everyone would have to comply with minimal standards many feel are inappropriate, perhaps constraining, and at least not worth the trouble of documenting.

By differentiating their oversight efforts, states may better assure compliance in areas of regulation and in districts where standards are particularly important. Differential treatment provides a means of making oversight less painful and more productive for both regulators and regulatees.

In summary, differential treatment strategies have the potential of encouraging school improvement, permitting more efficient tailoring of policy to local needs and alleviating regulatory unreasonableness. How some examples of differential treatment actually address these issues is the subject of this paper. In the next section, we describe the four programs we examined.

Four Examples of Differential Treatment

We studied four states undertaking differential treatment strategies. The evidence we collected about the development of the strategies, the political context surrounding their initiation and implementation, and the effects of the strategies in local districts and schools is detailed in individual case studies.[1] Here we briefly describe the programs and summarize our findings.

Kentucky's Educational Deficiency Program

Kentucky's educational deficiency program was enacted in 1984 as an amendment to the Educational Improvement Act, but the statute was not invoked until 1987 under Superintendent John Brock. Under this program, districts were required to submit an Annual Performance Report to the Kentucky State Department of Education (SDE), to publish an Annual Performance Report in a local newspaper, and to create a Master Educational Improvement Plan (MEIP) which consolidates accreditation plans, academic improvement plans, the Master Inservice Plan, a financial plan and program involvement plans (addressing attendance and dropout). The legislation also established minimum performance criteria in several areas. Deficiencies in these areas had to be addressed in the MEIP.

Nine possible areas of deficiency were established: failure to keep accreditation plan of action timelines, failure to submit or implement the MEIP, failure to submit the Annual Performance Report, failure to publish the Annual Performance Report in a local newspaper, failure to submit a required progress report, failure to meet the standards set for district performance on a national standardized test, failure to meet the required standard for attendance (93.5 percent or above), failure to meet the established standard for the district dropout rate (5.5 percent or below), and failure to meet the standards set for district performance on a state standardized test.

The deficiency program included four phases of compliance with the standards: Phase I for districts with no deficiencies or deficiencies addressed by their MEIPs; Phase II for deficient districts judged to be not complying with or adhering to the timelines established in their approved MEIPs; Phase III for persistently non-complying districts;

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[1]Unless otherwise noted, all evidence in the following analyses is drawn from four case studies of differential treatment published by The Policy Center of CPRE: *Kentucky's Program for Educationally Deficient School Districts: A Case Study* by Patricia Fry, Susan H. Fuhrman, and Richard F. Elmore; *Schools for the 21st Century Program in Washington State: A Case Study* by Patricia Fry, Susan H. Fuhrman, and Richard F. Elmore; *South Carolina's Flexibility through Deregulation Program: A Case Study* by Susan H. Fuhrman, Patricia Fry, and Richard F. Elmore; and *State Takeover of a Local School District in New Jersey: A Case Study* by Margaret Dolan.

and Phase IV for districts still not meeting established timelines for correcting difficulties. Phase II districts were eligible for but not mandated to accept state technical assistance and recommendations for improving the deficient standard(s). Phase III districts received technical assistance and direct supervision by SDE staff in their day-to-day activities; board actions were subject to the approval of the state superintendent or his designee. In Phase IV, a member or members of the local board, the superintendent, or other school district personnel could be removed by the state board of education. A district in Phase III or IV was considered to be in receivership.

At the time of our research in 1989, there were two districts in Phase III: Floyd County and Whitley County. Both of these districts had been in Phase II for four years. Floyd County was placed in Phase III due to its slow improvement in the attendance standard. In 1985-86, its rate was 91.69 percent; in 1986-87, it was 92.42 percent; in 1987-88, it was 92.53 percent. While moving toward the standard of 93.5 percent or above, the rate of improvement did not meet the minimum yearly gains specified by the program. In routine SDE accreditation in 1987-88, Floyd was cited as being non-compliant in over 90 criteria spanning curriculum and instruction, pupil services, school plant facilities and finances.

Whitley County was placed in Phase III due to deficiency in the attendance and dropout standards. In 1985-86, the attendance rate was 91.29 percent; in 1986-87, it was 92.28 percent, and in 1987-88, it was 92.55 percent. In 1985-86, the dropout rate was 7.35 percent, in 1986-87, it was 6.43 percent, and in 1987-88, it was 6.84 percent, again, not a sufficiently rapid rate of improvement to meet the standard. Whitley County was also judged to have serious management and financial problems; it was placed in the state's Management Assistance Program in 1986.

At the time these districts were placed in Phase III, Kentucky was in the process of administering a new statewide achievement test, the old testing program having been discontinued. The state had not yet developed cut-off scores for MEIP standards. Therefore, student performance was not to be a criteria for deficiency.

Both districts are in eastern Kentucky, have coal-based economies, low per capita incomes and high unemployment rates. Both were judged by state officials, local community members and many teachers to suffer from serious patronage and nepotism problems. In Floyd, teachers reported being fired or suffering other punishments for supporting losing board members; respondents said it was impossible to get a job with the schools, the largest employer in the county, unless a candidate had connections. In Whitley, school board members ran on the platform of who they would choose to be superintendent. Teachers and other personnel who spoke out against board policies or members felt subject to intimidation and job-related recriminations. Respondents cited incidents such as outspoken teachers being followed, being unexplainedly stopped by the police, and having their classrooms overloaded with students from several different grade levels.

The corruption issues may have been at the heart of the state intervention, despite the use of attendance and dropout measures as the official reasons. When Covington County, a "clean" but poor and low-achieving district, was placed in Phase II (the point when districts became officially labelled "deficient") considerable controversy ensued. In part, negative comment focused on the manner in which Covington educators found out about its classification, by reading about it in the newspaper before formal department notification. But underlying the criticism was the concern that Covington was a district with a record of good leadership that did not deserve the negative publicity. In defense of its actions, department staff maintained that Phase II was not meant to be negative, and that until Floyd and Whitley were moved into Phase III in 1989, Phase II did not have such a stigma attached to it. However, it was clear that department officials were wary about stigmatizing places seen as making an effort, districts that might be seen as willing but lacking in capacity.

The Phase III intervention had several components. One was a curriculum audit, "an independent examination of data pertaining to educational program practices that will indicate the extent to which a school district can meet its objectives (whether the latter are internally or externally developed or imposed)" (Kentucky State Department of Education, 1989, p. 2). Floyd County requested to be the pilot audit in Kentucky prior to its movement into Phase III, and some feel that the movement into Phase III was partially a result of the negative findings of the audit. Audits then became mandatory for Phase III districts.

The curriculum audit, performed by trained SDE staff, was based on three data sources; documents, interviews, and site visitations. The documents used include board policies, curriculum guides, reports, memoranda, budgets, state reports, and accreditation documents. Interviews were held with most of the members of the board of education, top-level administrative staff, building principals, teachers, supervisors, parents, and other relevant persons. Every classroom in every school was visited during the site visitations.

In Floyd County, the audit found serious management problems, including outdated, ineffective board policies and absence of planning and accountability. These problems allowed a patronage system to evolve and flourish. The auditors also cited the absence of curriculum planning, uneven and inequitable curricula across the five high schools, the absence of comprehensive assessment, failure to use available test results to monitor curriculum, and little gains in test scores over time. Auditors found excessive local fundraising activities, inefficient budgeting processes and facilities that ranged from modern to unsanitary and degrading. Recommendations encompassing the more serious findings included the elimination of the patronage system, the creation of a valid long-term plan, revision of the organizational structure, establishment of healthy and sanitary environments, revision of the budgeting system and development of a procedure to use test data.

Whitley's audit findings were similar, citing confusion about who was in charge of programs, great variation in teaching materials and supplies at the elementary level,

inequities in time allocations and staffing formulas, and a defeatist attitude regarding pupil success. The audit found many other management, budget and facility problems. Whitley was urged to develop open hiring policies, develop a strategic plan, develop a comprehensive testing policy, and to review the language arts program, among other things.

Another component of the intervention was management assistance (MAP), a program established in 1985 and provided, based on state agency resources, to districts ranked by the severity of their management problems. In 1989-90, 14 districts participated in MAP in addition to Floyd and Whitley. The districts were assigned a team manager to spend full time in a district for one to two months at the beginning of the project, and then about five days per month. Management assistance focused on appropriate use of resources, such as shifting resources from support services, where low-paying patronage jobs were likely to be located, to instruction. The department developed standards for numbers of maintenance and clerical personnel based on practices in better performing districts.

Finally, the state provided technical assistance. By the accounts of state personnel, the assistance was considerable. A team was formed for each district including the management assistance contact, an instructional assistance broker and a department coordinator that planned and marshalled other department staff to provide interventions. In one week of June 1989, 16 state personnel were in Floyd working in teams for curriculum guides. Other assistance activities included inservice of all administrators, focusing on analysis of skills and developing action plans. The department was also developing a research model to assess the school climate and assisting with the development of an attendance plan. Between January and June, approximately 117 person-days from just one division of the agency were spent in Floyd.

However, school personnel did not see the benefits of assistance. In Floyd, we were told that the state was initially disorganized, slow to get moving and unrealistic when it did get organized. For example, teachers said they were given only five days to get together and write curriculum guides and then were criticized for doing an inadequate job. In both Floyd and Whitley, teachers complained that state assistance personnel worked mostly with the district and some building-level administrators and that their presence was not felt at the school level.

Floyd teachers and community members saw some positive results to the intervention. They cited a new district policy manual which included more sick leave options, personal leave for teachers, higher standards for athletic participation, and the elimination of senior trips. They also cited board response to audit recommendations about closing two small schools and rebudgeting, which meant some cuts in teaching positions but many cuts in maintenance and custodial positions.

To deal with its attendance problem, Floyd adopted an attendance policy that required students who were absent for nine days to be removed from classes, after an opportunity

to explain the absences. During the time students would normally spend in classes, they were placed in a study hall.

In Whitley, the state was instrumental in achieving some consolidation of positions, but were given little credit for anything else. Curriculum guides were not written nor was there any action on such problems as having teachers paint their own classrooms and buy their own book cases. One group of teachers summarized the improvement emphasis in the district as follows:

> The teachers see an emphasis on test scores. Administrators are trying to encourage them to teach items; we think they will evaluate the teachers on the test scores. They are developing an attendance policy that is not to be enforced. . . There is no art or PE equipment even though it is in the curriculum. Now the California Test of Basic Skills are in the lesson plans by item.

Perhaps the perceived inaction on the part of the state was due to the fact that Whitley County filed suit against the state because of the district's movement to Phase III. Ostensibly, the district cooperated with the takeover process until the suit could be settled. However, administrators refused to discuss the process while the case was in litigation. Whitley was eventually successful in its claims. The court found that the state had inappropriately modified the standards for deficiency in a way that placed only Floyd and Whitley in Phase III, while others were eligible. Among the problems was that the state used test scores to intervene in Whitley when the state's position at the time was not to use these measures because the legislature had discontinued the existing testing program.

The court also found that virtually all the state assistance to Whitley came from programs outside of the Education Improvement Act, whereas Phase III districts were to receive assistance beyond that provided under other state-sponsored activities. In addition, the court said that the state violated equal protection provisions, when it made Floyd and Whitley, and not other districts with equal deficiencies, Phase III districts. Finally, the court found that the legislature had not funded the Educational Improvement Act sufficiently to permit the realization of program goals (*Whitley County Board of Education, et al. v. John Brock, et al.*, 1990). Because of the court ruling, Whitley was removed from Phase III as was Floyd in order to avoid another suit.

It was another court action that led to the end of the existing deficiency program. In *Rose v. the Council for Better Education, Inc.*, the state supreme court declared Kentucky's entire system of financing and providing education unconstitutional. In response, in 1990 the general assembly enacted a sweeping reform of Kentucky education that amended the deficiency program. The new Schools-in-Crisis program focuses on troubled schools rather than districts, offering a way of serving more localities and avoiding the dilemma that had faced the state when resources permitted intervention in only Floyd and Whitley while others were equally eligible. Schools-in-Crisis are to be

assigned one or more Kentucky distinguished educators to provide assistance and evaluation for retention, dismissal or transfer of staff. Districts may also be eligible for a form of receivership, again with the guidance of outside experts.

In both Floyd and Whitley, many teachers and community members had welcomed state intervention. They hoped it would bring an end to political interference and patronage. In neither district did they feel that progress was made on this front. In fact, just prior to the Whitley court decision and the enactment of a new type of deficiency program, the Floyd County Educational Association requested that the state board move the district into Phase IV so that local leaders could be removed. The request was not granted.

New Jersey's Plan to Intervene in Deficient School Districts

On October 4, 1989, the New Jersey State Board of Education unanimously voted to take control of the Jersey City public school district because it had not afforded the "thorough and efficient" education required by the state constitution. The takeover was pursuant to legislation signed by then Governor Thomas Kean in January 1988.

The takeover concept developed by the Kean administration borrowed the bankruptcy analogy from the private sector and applied it to public schools. Although New Jersey's education commissioner possesses among the strongest set of formal powers in relation to local schools in the nation, the history of past state interventions in New Jersey had not been encouraging. State officials had appointed an auditor general for Newark in the mid-1970s, but he had no administrative authority in the district, and it continued to incur deficits while he was in place. In East Orange, the state sent in an auditing team in the mid 1980s after misappropriations of district money had been uncovered by state department of education (SDE) audits. The team had power to approve or disallow purchasing contracts, but had no say over decisions in other district departments. A monitor general was given far-reaching powers over fiscal, personnel and programmatic matters in the Trenton school district between 1979 and 1982. The monitor was withdrawn in 1982, perhaps for political reasons. Eight years later, Trenton had yet to be certified as meeting state monitoring standards.

The Trenton episode remained in the mind of officials who drafted the takeover legislation in 1986. They had been frustrated by local board lack of support for external intervention expressed by constant, time-consuming court challenges. Furthermore, state officials were unhappy with their options for dealing with the handful of districts which appeared unwilling or unable to correct deficiencies identified under the state's monitoring system. That system, adopted in 1984, assessed whether districts met 51 state standards, both process and performance, grouped into 10 general categories such as finance, facilities, curriculum and basic skills achievement. Districts that met the standards were certified and did not require monitoring for a five-year period. Districts that failed to

meet state standards were placed in Level II and given a minimum of one year to devise and implement a plan to remedy deficiencies.

The takeover legislation created a third level in the state monitoring system, Level III. It provided for a series of SDE and outside investigations of districts with unsuccessful Level II plans. The findings of the investigations and of public hearings would lead to either corrective requirements or to the establishment of a state-operated school district, to be run for a minimum of five years by a state-appointed superintendent. The local school board[2] and central office administrative staff positions would be abolished. When, after a minimum of five years, deficiencies had been eliminated and the district met state certification standards, local control would be reestablished.

The state board's decision to make Jersey City the first takeover target was based on evaluations of the district over a five-year period. The district had failed over half of the state requirements in its 1984 and 1986 monitoring. The external and SDE reviews conducted preliminary to Level III found that the district had failed to meet state standards in the areas of curriculum; facilities; finance; student attendance and test scores; staff certification and evaluation; and provision of mandated programs such as special education, bilingual education and remedial basic skills instruction. The Jersey City Board challenged these findings in court. After over 21,000 pages of transcript and over $1,000,000 in legal fees for the defense, the judge found that "the record strongly supports the need for state takeover to address longstanding problems which the local district has been unable to cure" (*McCarroll v. Jersey City* 1989, p.4).

As in Kentucky, some New Jersey policymakers and educators believe that the choice of Jersey City was more political than educational. Some see it as a vendetta of Trenton Republicans vs. Hudson County Democrats. Many noted that Jersey City was known for political interference, nepotism and patronage. In the 1988 administrative law decision in New Jersey's simultaneous school finance litigation, Judge Steven Lefelt made factual findings that "the pervasive nature of the political intrusion into Jersey City's school system (was) shocking and harmful to the school children of Jersey City and qualitatively and quantitatively different from the pressures present in most other property poor districts" (*Abbott v. Burke* 1988, p.333). Saul Cooperman, then New Jersey's Commissioner of Education, believed that the political interference problems in Jersey City were flagrant. As he has since expressed it:

> Only when the monitors laid at my doorstep the systemic problems of Jersey City, did I, and the people around me, discuss the Comprehensive Compliance

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[2]The abolition of local boards of education in bankrupt districts was hotly contested in the New Jersey legislature. Eventually a compromise called for the creation of a citizen's advisory committee. Compromises were also reached in the areas of tenure rights for principals and funding. These changes overcame the initially strong opposition of several major interest groups.

Intervention. With Jersey City, unfortunately, the more and deeper we looked, the worse it became.[3]

Elena Scambio, a former teacher, state monitor and administrator with both suburban and urban experience, was appointed the state district superintendent of Jersey City. She immediately announced a four-point improvement plan: reviewing and overhauling the district's administration; strengthening and empowering management and leadership at the school level; developing a 1990-1991 budget that met the district's new educational objectives; and creating an aggressive plan for construction, renovation and maintenance to address the deplorable facility conditions monitors had repeatedly cited. She also began a building cleanup, started a major "Kids First" campaign of speeches, bumper stickers and billboards; planned for school-based management; and instituted meetings with various sectors of the community.

Much of Scambio's first year was consumed by administrative issues. First, Scambio informed the existing seven top district officials that their positions were abolished. This action was made a top priority by the takeover legislation which mandates the termination of leading posts in primary areas of district operations. Because these individuals held seniority or tenure in another position within the district, many of them are still working in Jersey City. For example, the former superintendent is now a vice-principal of an elementary school; the former assistant superintendent of curriculum is now an elementary school principal.

Second, Scambio's own seven-member team, which she assembled and brought with her from other districts, was charged by the legislation with evaluating all those employed in central administrative and supervisory staff positions (421 individuals) within six months. Not knowing the ropes themselves, they had to run the district day to day, plan all the other improvement components and spend significant time evaluating the very people on whose experience they would have to rely. Retired educational administrators from around the state were hired on a *per diem* basis to conduct evaluations; the top staff worked on the final evaluations. The evaluations were to lay the groundwork for a mandated total central office reorganization. This was to occur by April, six months after takeover, and not the most opportune time for a major reorganization since there is no natural break in the school year then. Finally, during these first six months the administrative team had to meet in confidence to assess district staff, a situation which led to an aggravation of the "we" vs. "them" problem the outside leaders immediately faced.

The April 4, 1990 reorganization called for the elimination of 117 central office positions, a cut of 27 percent. However, because most of the individuals had tenure in the system, and because the legislation made it clear that seniority rights in formerly held

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[3]Personal communication from Saul Cooperman, president, Educational Programs, Amelior Foundation, June 18, 1991.

positions were to be maintained, only six were actually put out of work. One hundred and eleven "bumped" other individuals in administration and teaching positions, providing a mammoth job for the personnel office in sorting out tenure and seniority rights and leading to a host of grievances and lawsuits.

Third, the takeover legislation also calls for the evaluation of all building principals, to be accomplished within the first year of takeover. In May, the Jersey City Administrators and Supervisors Association filed a complaint with the commissioner that the district had not spelled out evaluation standards.

Personnel issues remained so troubling that promising new programs were hampered. For example, Project R.E.A.C.T., a plan to coordinate services for special need students was initiated in early 1990; by fall many positions within the structure were still vacant and there were doubts about whether newly hired student assistance counselors knew their responsibilities or were qualified for their jobs. Rumors abounded about favoritism in personnel decisions and about the promotion in the reorganization of unqualified individuals, many of whom had previously been responsible for programs that had failed to meet state standards. There were complaints that the new administrative structure lacked clarity and well-defined lines of responsibility. Many administrators and teachers were quick to blame the state team for all manner of problems in the district. The legal challenge to the principals' evaluation had consumed much of the state district superintendent's time. As she explained, "We have to be compulsive that people's rights are not violated since the legislation is new and everything is going to be tested in the courts."

While Scambio and her team were struggling with these issues, the state did not appear to be offering as much support to the takeover process as it might have. Jersey City's urgent need for new facilities was being held up by a lengthy delay in amending the takeover legislation to permit a state-operated district to issue school bonds, an issue eventually resolved by the time of this writing. The mayor's opposition to the proposed school budget resulted in less of a funding increase than Scambio felt necessary. The state division of local government services in the New Jersey Department of Community Affairs could have made up the disputed amount as per a compromise reached in the passage of the takeover legislation, but it did not.[4]

Very little state presence was noted in the district. Two middle-level state administrators who had expertise in finance and personnel worked part-time in the district during the first two months of state control. In a few instances lower-level state staff were sent to the district to help for a day in a specific assignment. State agency officials had never received any formal directions about treating Jersey City, and many believed that Jersey City was not due special assistance.

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[4]In June 1990, the New Jersey legislature passed the Quality Education Act which revised state aid to 30 special needs districts, including Jersey City.

As in Kentucky, many school-level employees, parents and community members had looked forward to state takeover. They were hopeful that the new administration would rid the district of its incompetent political administrators and turn attention to student needs. Some of these concerns were met. There are more internal fiscal controls pursuant to the establishment of a state-mandated internal auditing team. Overt political interference of the local board was ended with its abolition. However, as noted above, state law provides for tenure in positions formerly held by dismissed district administrators. Most of the previous administration remains in the district and will still be there when Elena Scambio's minimum term concludes in 1994 and when a new local board selects her successor as Jersey City superintendent.

South Carolina's Flexibility through Deregulation Program

The deregulation program was enacted as part of a 1989 legislative reform, "Target 2000: School Reform for the Next Decade." Target 2000 built on South Carolina's major 1984 reform, the Education Improvement Act, by expanding early childhood programs, encouraging higher-order thinking, and expanding services for at-risk students.

The program exempts certain schools from regulations and statutory provisions governing the state's Defined Minimum Program, the Basic Skills Assessment Program and the Remedial/Compensatory Program. Eligible schools are those that: (1) received school incentive rewards twice since 1987; (2) met annual NCE gain requirements for reading and math compensatory programs; (3) exhibited no recurring accreditation deficiencies; and (4) annually exhibited a school gain index value at or above the state average.

Business and legislative education leaders promoted the program as a way to encourage innovation, on the assumption that deregulation would provide the occasion for schools to take a look at their operations. Restricting eligibility to performance reward winners meant that only successful schools would be eligible, although the state's system of comparison banding spreads winners across socio-economic categories (Richards and Sheu 1990).

Some members of the business community were willing to make deregulation more widely available to less successful schools, but political leaders and department officials worried about taking such a step. First, they believed that the Defined Minimum Program (which they acknowledge to be highly restrictive, particularly in its requirements for minimal instructional time in specific subjects) was necessary and beneficial for many South Carolina schools. They often cite the all-black districts governed by all-white boards whose members send their children to private schools and do not make the welfare of public school children a priority.

Second, they believed that other components of Target 2000 could provide some flexibility to non-reward winners. These components are the School Innovation Grant

program which provides planning and implementation awards (of up to $90,000 over three years) for curricular and other types of innovations as a result of a competition open to all schools in the state; and the Dropout Prevention Grants which supports special programs for at-risk students to districts and schools that submit successful proposals. Both programs make rule-by-rule waivers available to grantees.

Third, for several years there had been an experimental programs policy, permitting schools and districts to apply for waivers, although it was not widely used. Fourth, it was the most successful schools who had complained the loudest about the restrictiveness of state regulation.

Finally, many leaders viewed the deregulation program as a pilot. If the successful schools experimented with flexibility in productive ways, it might make sense to broaden eligibility. In fact, in June 1990, the state board adopted a school restructuring proposal to extend regulatory flexibility to non-deregulated schools that do not qualify for Target 2000 competitive grant funds, because ". . . the interest among South Carolina educators to implement innovative programs for general school populations and at-risk students far exceeds available funds" (South Carolina State Department of Education June 13, 1990, p.1). Under a proposal, negotiation, and approval process that includes review of specific waiver requests, six districts successfully applied for restructuring waivers. The waivers granted ranged from 1 to 14 in number; all six districts requested exemption from some of the minimum time requirements in specific subjects.

Under the deregulation program, eligible schools are automatically exempted from a body of regulation. Although the program targets schools, districts may decline deregulated status for schools within their boundaries by so notifying the state board within 60 days after schools are declared eligible. A school that loses eligibility by failing to meet the criteria requiring maintenance of gains may request a one-year extension; in any case a school will not be monitored on waived regulations for an entire year after it becomes ineligible. During the period of deregulation, no on-site monitoring visits occur unless requested by the school or district; instead the schools submit simplified written assurances of compliance to regulations remaining in force.

The regulations removed for eligible schools were determined by the state board, based on recommendations from the department and the South Carolina Business-Education Subcommittee. The latter, a stable group of leaders created in the 1984 reform, was given responsibility by Target 2000 for reviewing regulations and recommending potential areas of waiver to the state board of education. The removed regulations generally concern class scheduling, class structure, and staffing. For example, while a minimum six-hour day for elementary students is still mandated, requirements about maximum times for lunch and the circumstances under which activity periods count as instructional time are removed. Time allocations in subject areas are completely eliminated although instruction must be provided in each subject, and high school graduation requirements remain in effect. Teachers must be certified, but not necessarily in the subjects to which they are assigned. Maximum class size requirements are removed.

Another component of the program is technical assistance. Target 2000 created the South Carolina Center for the Advancement of Teaching and School Leadership. A consortium of all 26 higher education institutions operating state-accredited teacher education programs was awarded the center as a result of a grant competition. The center's purpose is to foster school reform and restructuring through training programs, technical assistance, networking, research support and other activities. All deregulated schools were invited to submit proposals to be named "associate schools" of the center, making them eligible for small grants to support school-level change. Ten schools were named in August 1990 as associates for the 1990-91 school year; up to 60 schools will be included by the end of the 1991-1992 school year.

The initial response of schools to the deregulation program has been positive. All of the 125 schools deemed eligible in 1990 participated; no local school board vetoes occurred. An additional 39 schools were deregulated in January 1991. The majority of these schools are elementary schools.

Seventy of the eligible schools responded to a survey in the fall of 1990 about their activities in the wake of deregulation.[5] About two-thirds of the schools were planning and/or implementing activities that principals reported were related to deregulation. About a quarter of the activities listed might be termed curriculum expansion and encompass adding subjects, such as career exploration, or special programs for types of students. Another quarter of the reported activities concerned revisions in the school day to provide either additional instructional periods or more planning time for teachers. Approximately a sixth of the activities concerned the organization of instruction, including the integration of subjects, team teaching and multi-age classrooms.

Schools that have undertaken more ambitious activities, such as restructuring their day or curriculum, tend to be somewhat smaller than the schools that simply added subjects or special programs. In addition, these schools were more likely to report that their districts gave them enthusiastic support, while those schools confining their activities to more discrete changes, such as adding special programs, were more likely to cite only cautious support from their districts. Most respondents reported that the DMP requirements on time allocation to subjects had been the biggest barrier to them before deregulation, but many felt that they could have undertaken their reported activities in the past anyway. However, it is telling that 71 percent of the activities reported were initiated only after deregulation.

When asked what factors might still provide a hinderance to new activities, the majority of respondents felt some hinderance from district standardized testing, the lack of time, and the lack of special funding for the program. The issue of funding is particularly

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[5]The survey was conducted by the Center for Policy Research in Education with the cooperation of the South Carolina Department of Education. Results are reported in Fuhrman, Fry and Elmore 1992.

interesting because these schools are receiving sizeable amounts from incentive rewards, averaging $30.00 per pupil in 1989 and ranging from several hundred dollars in very small schools to over $70,000 in the largest schools. It does not appear that incentive reward funds are seen as program support; like federal Chapter 2 dollars and other discretionary funds, they are most commonly applied to materials and similar items. Furthermore, less than 10 percent of the deregulated schools had applied for innovative or dropout grants in 1989-1990.

Finally, only 9 percent of respondents felt that deregulation would bring a great reduction in paperwork; a sizeable minority, 43 percent, expected no reduction in reporting demands at all.

The survey responses and subsequent visits to a number of deregulated schools shed some light on the effects of deregulation, although deregulatory status is still very new. It is clear that a number of activities were undertaken after deregulation that were not pursued before, even though respondents felt such activities might have been possible earlier. Perhaps the option of filing for an experimental program did not occur to many principals; a number said that the paperwork was a "hassle." It is also possible that deregulation caused schools to examine their operations in ways they had not previously.

Furthermore, more ambitious activities were more likely to occur where districts were strongly supportive, indicating that the district role is influential. Some districts create expectations, or even pressure, for deregulated schools, urging them to take advantage of their status. Some provide leadership and assistance to support innovation. Also, the central office may influence school personnel's calculation of risks associated with ambitious change. Since these schools have been successful, winning both substantial monetary awards and recognition for student achievement, they might fear changes that "rock the boat." Districts can provide support for change that counteracts the possibility of losing recognition and funding that counters the possibility of losing reward dollars. However, districts can do nothing about the fact that schools no longer winning rewards will eventually lose deregulatory status. That risk remains.

While the deregulated schools are automatically exempt from most requirements, schools in the innovative grant program and the dropout prevention program must request waivers rule-by-rule based on the program they propose. In the dropout program which has supported 32 grants over two years, there were approximately 15 waivers. High schools may require 7 or 8 waivers to implement a single concept because of various restrictions on instructional time and time permitted to students for earning credit. Over the first two years of the innovative grant program, 71 schools were funded for implementation of innovations; only 4 of those included waivers, largely dealing with the DMP time requirements.

Washington State's Schools for the 21st Century Program

The Schools for the 21st Century program is a competitive grant program to encourage school restructuring. The program has three major components: (1) funding is available to offer supplemental contracts to school employees for a minimum of 10 additional days beyond the school year; (2) resources and special support are available to schools to help them implement their programs; and (3) waivers of certain state regulations rules may be requested by schools if the rules impede implementation of a proposed program. Districts and collective bargaining units, from whom projects may also request waivers, must assure cooperation with the project. Waiver requests may continue throughout the six-year duration of the program.

The program was first conceived by Governor Booth Gardner as a vehicle to provide additional contract days to teachers for planning and professional development. When it became clear that a statewide program of extra salaries for teachers had insufficient political support, the program was transformed into a grant program to subsidize innovation. It was enacted in 1987; first-year funding was pegged at $2.4 million permitting 21 sites, mostly individual schools and a few districts and consortia, to receive grants of between $60,000 and $200,000, depending primarily on the number of teachers whose contracts would be extended. In 1990, 12 projects were selected for round two of the program. The selection process involves the Governor's Task Force on the Schools for the 21st Century, composed of 10 educators and business leaders, that reviews proposals and recommends projects for approval to the state board of education.

The 21st Century legislation authorizes the state board and the Washington State Superintendent of Public Instruction (SPI) to grant waivers to pilot projects. Waivers may be related to "the length of the school year, teacher contact-hour requirements, program hour offerings, student to teacher ratios, salary lid compliance requirements, the commingling of funds appropriated by the legislature on a categorical basis for such programs as, but not limited to, highly capable students, transitional bilingual instruction, and learning assistance" (Washington State Senate 1987), and other rules needed for implementation of a project. Projects may also ask the state to request necessary waivers from the U.S. Department of Education or other federal agencies. The state board reports that efforts to obtain waivers of federal regulation have been unsuccessful to date (Washington State Board of Education 1991).

The program has generated a great deal of interest from its inception. This is so despite some concern that the state agency, given authority by the legislation to administer the program, was not entirely supportive of the governor's initiative initially and despite a very short time frame for proposal preparation and submission. That first year, 135 proposals were submitted, representing 84 districts. One hundred and one proposals were submitted for round two. According to participants surveyed by the SPI in 1989, the potential of funding for extra teacher time was the most attractive component of the legislation (Washington State Board of Education 1991).

It was certainly not the waiver provision that drew applicants. Few projects requested waivers for their programs. Of the 21 initial grantees, only six requested a total of 15 waivers from state regulation, 9 of which were granted. Eleven of the 33 projects now participating have been granted waivers in one or more of 13 categories. The most common concerned regulations governing total program hour offerings for basic skills and work skills (5 projects); and classroom teacher-student contact hours (5 projects) (Washington State Board of Education 1991).

The state board describes the substance of the projects as falling into eight areas: (1) shared decision-making; (2) activities, such as nongraded programs, that change traditional grade level/promotion practices; (3) integrated curriculum; (4) the awarding of credit based on learner outcomes rather than seat time; (5) alternative means of student assessment; (6) year-round programs and other alterations in the length of day and year; (7) staff-designed learning environments; and (8) small learning communities in large schools.

Smithtown High School's[6] 21st Century schools project focuses on curriculum revision to incorporate issues of international and global significance. A suburban Seattle school, it has an increasing proportion of Asian students. A focus on the Pacific Rim is an important component of the project which sets themes for each grade level and utilizes new course requirements, mini-units and interdisciplinary courses to achieve the substantive focus. For example, ninth graders, focusing on the individual as a theme, have an integrated block of English and social studies with the hope of bringing more subjects on board. In tenth grade, the theme is community; sophomore English incorporates that theme and students have a 20-hour community service requirement. Juniors will need to address the Pacific Rim theme through one of their regular subjects; each department will have at least one offering that will meet the requirement. Seniors will have an humanities course focused on an internal theme, an adult survival skills course and a culminating senior project.

Smithtown sought a waiver of the classroom teacher contact-hour requirement in order to release students early one day a week to permit teacher planning time. It has also worked with its union to waive contract-day requirements for a continuous 8-hour day, permitting the school to schedule some evening hours. The major impediment it now faces concerns funding alternative staffing patterns. In order to provide coordination and monitoring for special programs, such as the student community service requirement, more staff is needed. But, the state funding formula allocates aid based on an expected student/teacher ratio and enrollment. According to a program coordinator:

> The problem really is not the state rules and regulations. The problem is really state financing. . . For example, one of the things we asked for was payment on the basis of (an actual) staffing ratio. When you're going to try to do a different

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[6]The names of schools discussed in this section have been changed to protect confidentiality.

kind of job, you may need more people to do that job. Well, they . . . granted the waiver, but the waiver does no good if the state is not willing to appropriate the funds for the additional staffing. So, this whole business of waivers is, in the long run, meaningless. If it is going to cost the state any more than they originally intended to spend, then they'll grant them, but they won't fund them. So it makes no difference.

Smithtown did receive some additional funds from its district. Release time for the leadership team and transportation for the early dismissal has been supported locally. Although the 21st Century grant does support some release time during the school year for teacher involvement in planning—as well as the 10 additional contract days—as the project gets underway, more teachers want to be involved than were written into the grant proposal. Therefore, the more successful the project in terms of teacher enthusiasm, the more likely the project's release time funding is insufficient, according to the Smithtown project leaders.

Another 21st Century Project school in suburban Seattle, Carver Middle School, has a multi-faceted improvement effort. Components of the program are outcome-based education, organizing the school into interdisciplinary teams with a group of teachers responsible for 100 or so students, and getting students to take more responsibility for their learning through "reality therapy." The outcome-based approach is patterned on the Mastery Learning Project in Johnson City, New York, which has provided the staff development training during the extended contract days. The process involves clarity about curriculum outcomes, an emphasis on higher-level thinking, alignment of classroom activities with outcomes, changes in grading procedure to reward mastery and to provide additional opportunities for students to demonstrate mastery, and daily flex time of 40 minutes for students to work with members of their team teaching group for assistance and/or enrichment. Reality therapy, also the subject of project-funded inservice time, concerns moving away from reward/punishment toward providing students with a sense of control over and responsibility for their own progress.

Carver Middle School has found ways of embarking on improvement without requesting waivers or seeking additional funds, as much as it would like the latter. For example, to provide time for teachers to work on curriculum revision, the students come in late or get released early twice a month. To avoid bridging the state contact-hour requirements, the school added 10 minutes to its day. In addition, while the teacher contract calls for teachers to arrive one half hour before the students and stay one half hour after they leave, sometimes teachers stay longer beyond the school day to participate in the school's study club. The principal has then permitted teachers to come in closer to the arrival of students the next morning. Calling it flex time, the principal explains, "We're always pushing on the edges and we just kind of figure out a way to do it." It may also be the case, as the principal hypothesizes, that high schools are not as free as middle schools to innovate because they must be more concerned with credit hours and graduation requirements. However, there is a sense at Carver that participation in the 21st Century program should lead to the identification of regulatory barriers. When asked

whether rules were a barrier, the principal replied, "No—that's why maybe we should be more innovative."

Both schools are concerned about a barrier totally unrelated to regulation: the cooperation of schools they feed or are fed by. Smithtown staff worry about the transition of middle school students into their ninth-grade integrated program and have spent time working out articulation issues. Carver Middle School staff have found some high school faculty to be skeptical of their program, even though the 21st Century program brings statewide recognition and the school's approach is being emulated by other schools. The high school is seen as resistant of the middle school's approach to student mastery and its willingness to provide additional opportunities for students to achieve.

Neither school reports much state project-related activity beyond networking and facilitating communication among project schools. The state is seen as cooperative and flexible, and becoming more so over time. There is an expectation that the projects will need to show results in terms of improved learning to sustain state support for the program and innovation more generally; neither school seems worried about that issue.

At the time of this writing, the Washington legislature was considering a plan to create an independent commission to set content outcomes expected of all students. The plan, a compromise between reform proposals made by Governor Gardner and Superintendent of Public Instruction Judith Billings, might result in a form of outcome accountability that would make most process regulations unnecessary. All schools would be substantially deregulated (Flax 1991). If the plan succeeds, many suggest that 21st Century program proponents will feel that the program achieved one of its original goals: serving as a model for broader deregulation.

Differential Treatment: Practice vs. Potential

We now turn to our discussion of whether the examples of differential treatment we have examined offer potential for encouraging school improvement, tailoring state policy to local needs, and alleviating regulatory unreasonableness. Some caveats are in order.

First, we must underscore two words in the opening sentence: examples and potential. The programs we studied are models of various strategies; they do not represent the range of possible strategies. Other potential approaches include state intervention programs designed to focus more on schools than districts, along the lines of the revised Kentucky program, and deregulatory programs open to less successful schools and districts. Also the effects of the programs we studied are strongly dependent on state and local context. We chose them to be illustrative of the issues that arise in takeover and deregulation programs, not because studying them would provide definitive answers about the operation of such programs. As to potential, all these programs are fairly new, and some are in transition. Differential treatment strategies must be studied over time; this paper provides only a snapshot of initial activities.

Second, the programs may serve many purposes other than the issues on which we focus. For example, takeover program proponents argue that takeover has a deterrent effect on troubled districts and schools. We did not examine the reaction of potential takeover targets, focusing instead on how takeover operates in actual targets. Hence, our discussion is intended as much to suggest avenues for further study as to indicate implications for the design of differential treatment strategies.

Encouraging School Improvement

Perhaps the strongest finding to emerge from our research is that takeover programs can have very little to do with long-term educational improvement. The Kentucky and New Jersey programs have operated to promote goals other than improvement.

In Kentucky, the primary message received by takeover targets concerned compliance. The imperative was placed on doing everything possible to meet state performance targets so the district could move out of Phase III. Everything possible appeared to include teaching to the test and adopting an attendance policy that removed frequently absent children from even more class instruction. In New Jersey, the emphasis was on altering the governance and management of the Jersey City schools, perhaps on the theory that new leadership could then set about real school improvement. The takeover legislation's requirements for first-year activities meant that the state-appointed leadership had to focus almost entirely on administrative reorganization. In the process, school personnel who welcomed new leadership because it might benefit the children were

losing patience and hope. And, the new leadership team was risking its credibility by failing to focus on educational problems, much as it might have wanted to do so.

In neither Kentucky or New Jersey, was state agency presence felt in the schools. No technical assistance seemed to filter down. The states sent messages about their priorities that were received by school personnel. Whether or not they intended it, state policymakers indicated that their interest did not really lie in school-level improvement.

In our opinion, if takeover fails to improve teaching and learning, it is not worth the stigma suffered by school personnel and communities. In both states, takeover brought real shame. In fact, the stigma felt by Floyd and Whitley undoubtedly contributed to the haste with which they sought to reach state minimal standards, undertaking efforts that might undermine improvement over the long term. The court battles surrounding takeover in both states is further evidence of the horror it brings: a vicious cycle of litigation to escape or modify the impact of takeover that detracts from the efforts of intervenors to assist the takeover target. Perhaps the disrepute and dishonor, as well as the litigation and controversy, is particularly an issue with initial takeover targets. Over time, the controversy may die down; subsequent interventions may be smoother. In any case, unless the intervenors can focus on educational issues, it is hard to imagine that schools will improve substantially.

As to the deregulation and waiver programs, the evidence is more encouraging. Many of the improvement activities schools are undertaking, such as integrating curricula and creating opportunities for sustained contact between teachers and students, seem promising, at least in their initial phases. Much of the relationship between the state program and the ferment of the school level may relate to the non-deregulation components of the state policy, such as the provision of additional teacher time in Washington, the availability of technical assistance in South Carolina, and the publicity and recognition associated with the special status of participating schools in both states. In addition, we might find similar levels and types of school improvement efforts in states without explicit restructuring programs, just because the concept of restructuring is gaining national visibility, and more models of restructuring experiments are available for emulation.

Furthermore, the deregulated or waived schools in both states were already successful, the kind of schools that might have been breeding grounds for innovation, regardless of the state policy that encourages it. In South Carolina, only the most successful schools, on available performance measures, are eligible for the deregulation program. In Washington, schools become eligible for waivers by writing successful project applications; such schools must demonstrate some capacity for planning improved programs to win the competition. Therefore, the presence of promising innovations may reflect a selection factor, not a program effect. However, it might also be argued that already successful schools have little need to change and might be wary of fixing what isn't broken or risking their successful status. In fact, we were prepared to find no relationship between deregulation and school improvement in programs where only

successful schools participated and hypothesized that restricting regulatory flexibility to "good" schools does not provide a fair test of the power of deregulation to encourage change.

Despite these cautions, regulatory flexibility does appear to make a distinct contribution to school improvement, albeit in subtle ways. First, schools that participate in these programs feel that they are expected to innovate as a result and feel some pressure to break beyond existing barriers in the process. The spotlight is on them to show that they have vision and are not willing to let rules impede. The effect of increased expectations may be short term. Whether or not schools actually do innovate in meaningful ways will only become apparent over time, but at least initially, schools feel a responsibility to examine their programs and identify improvements.

Second, the regulatory flexibility provisions encourage schools to identify, and perhaps act on, the real impediments they face. The process clarifies the extent to which regulation, as opposed to tradition or local interpretation of regulation, is constraining. It also helps to surface other barriers, such as the lack of funding or the skepticism of other schools students will attend. Deregulation may remove one excuse for maintaining the status quo and contribute to overcoming other excuses.

Third, the design of the deregulation component affects its potential for encouraging school improvement. Comparing the experiences of the two states is instructive. One might argue that deregulation is more important in encouraging change in South Carolina than in Washington; South Carolina has been more regulatory in the past, and the DMP time-on-subject restrictions occasioned many complaints. Carver Middle School's experience indicates that schools could find ways within Washington's body of statute and rule to achieve their goals without deregulation. The same conclusion is indicated by the lack of interest in waivers among 21st Century schools more generally. The message may be that good leadership, vision and creativity will prevail, especially in the context of a relatively light-handed state or a state without much enforcement activity.

However, in the more heavily regulated state, the deregulation program is spurring more interest in taking advantage of regulatory flexibility than the rule-by-rule alternatives which more closely parallel Washington's waiver program. South Carolina schools could have applied for experimental program exemptions before Target 2000; few did. Also, few South Carolina schools have applied for waivers through the school innovation grant or dropout prevention grant programs. More importantly, few deregulated schools in South Carolina undertook the changes they are now pursuing before deregulation, even though many principals thought such changes were possible previously.

Based on the very scant evidence available to date, given the newness of the South Carolina deregulation program, it appears that granting automatic exemption to a body of rule may create a more fertile climate for consideration of improvement efforts than rule-by-rule waiver request programs. The reason may be as mundane as the fact that automatic exemption requires no paperwork or approval process. But there may be more

substantive reasons. Automatic, sweeping deregulation may be more stimulative of change because it is not any single rule or several single rules but the intersection of many rules that constrain. Also, up-front major deregulation broadens the horizon for planning of change, removing parameters more thoroughly than waiver request programs. One might imagine that a very different change process occurs when one is told that a set of rules no longer applies than when one is told to plan an innovation and request exemption from the specific barriers identified.

In summary, the takeover programs we examined do not appear to encourage school improvement while the regulatory flexibility programs may be related to it, although many other factors interact with the flexibility parts of these programs. Whether state intervention can lead to long-term improvement depends on the extent to which intervention programs actually focus on school-level change. Providing intensive assistance to school personnel might make the stigma of intervention worthwhile because it results in real improvement. Kentucky's new Schools-in-Crisis program may provide a test case for school-level state intervention that is worth watching. And, New Jersey's five-year program may eventually permit focus on school-level issues. Whether regulatory flexibility leads to school improvement depends on how it is designed. While our current belief is that broad, up-front exemption is more promising, definitive answers depend on comparisons over time that focus on how real, deep, and lasting innovations are best encouraged. Furthermore, no final conclusions on the effects of deregulation can be reached until schools that are not successful to start with become eligible. It may be schools most needing improvement that most benefit from flexibility and autonomy.

Tailoring State Policy to Local Needs

Do the takeover and deregulation programs assist in making state policy more responsive to local needs, beyond the issue of school improvement? In the case of takeover, the answer would have to be a qualified no. A most serious need of the troubled districts in both states was a remedy for the political problems that made them likely takeover targets to begin with. Yet neither Kentucky's nor New Jersey's program addressed the patronage and corruption issues to the satisfaction of many teachers and community members who had great expectations on this score. In Kentucky, management and fiscal accountability may have been improved, but the old crowd still remained in charge. In Jersey City, the board was disbanded and fiscal accountability was established, but former administrators remain in the system and may still be there when the state-appointed administrators depart and a new board is elected. In each state, recent initiatives, such as new provisions in Kentucky's reform legislation regarding hiring responsibilities and ethics and potential school board ethics legislation in New Jersey, may have more success addressing political problems than the bankruptcy programs themselves. The qualification to the lack of promise of the takeover programs relates to other aspects of the state interventions, such as Elena Scambio's efforts to involve the community more through informative public meetings or the ability of the many SDE staff who visited Floyd and Whitley to better understand the needs of such districts. Such

aspects may assist takeover targets in the long-run. Whether they are worth the trauma of takeover is another question, as is the possibility of the same sort of benefits resulting from a less stigmatizing effort such as more intensive, tailored technical assistance without the aspect of receivership.

The deregulatory programs do appear to bring a number of benefits to participating districts in addition to providing a stimulant for innovation. All get recognition; some get money and technical assistance. They are free, to a greater or lesser extent depending on whether they participate in a blanket waiver or rule-by-rule request program, to pick and choose which state rules they comply with. This alone grants them the potential of developing their own programs, or implementing remaining state policies and regulations, in ways more suited to their own needs and priorities than they previously had. Much depends, of course, on how the states reinforce this freedom over time. For example, the states might add new regulations without making them applicable for waiver, limiting the benefits of the deregulatory programs. It is encouraging that both South Carolina and Washington have sought to assure participating schools of the security of their deregulatory status. South Carolina has foresworn monitoring of compliance to waived regulations for at least a year beyond school participation in the program; Washington's 21st Century program makes a five-year commitment to exemptions granted.

There is another side to the potential of deregulatory programs to accommodate local diversity, however. As we have noted, the successful schools eligible for the programs we have studied—by virtue of their performance or ability to propose exciting innovations—might not be the only schools who would benefit. Less successful schools might be the very ones who need aspects of deregulation; unlike currently eligible schools, they have not flourished under the prevailing rules. For most of these ineligible schools their lower-performance is not for lack of effort or desire. Let us assume the truly "bad apples" could be weeded out. The remaining willing but not yet successful schools might use flexibility to better meet the spirit of state regulations by not precisely conforming to the letter.

In summary, differential treatment approaches suggest more accommodation to local needs in theory than in practice. The intervention programs have to date failed to address the most pressing local need, ridding the takeover targets of corruption. The deregulation programs seem helpful to participants but are not currently conceived to respond to the needs of many schools who might most benefit from flexibility. South Carolina's recent effort to extend flexibility to schools not eligible for deregulation and not successful in winning competitive grants may shed light on the issue of the broader benefits of regulatory exemption.

Providing Reasonable Oversight

On paper, the differential treatment strategies we have examined provide a solution to the dilemma of regulatory unreasonableness. Extensive oversight is provided to the least compliant and the most successful are exempt from legalistic conformance to rules meant

mostly for less successful schools. However, in practice these programs have little to do with making oversight more rational and reasonable.

The takeover programs were immersed in a web of documentation, litigation and justification. It is hard to discern whether pre-takeover actions focused more on ensuring compliance or documenting evidence of non-compliance to justify takeover. Litigation and papertrails continued after takeover. Even assuming that court decisions in the first rounds of takeover would settle a number of matters once and for all, it appears that receivership is so charged and delicate an issue that record-keeping to justify and document every action might take precedence over assisting districts and schools find ways to comply with state standards. Endless documentation is in some ways the essence of unreasonable oversight, even when it occurs in localities clearly requiring oversight.

The deregulatory programs are again a somewhat different story. Potentially, the absence of monitoring visits to South Carolina deregulated schools will free up not only those schools but state officials who might be more helpful elsewhere. And, while there is still paperwork to be done for the various rule-by-rule exemption programs, it does not appear onerous. However, our initial findings indicate that school personnel are reluctant to give up the documentation aspects of their jobs. Someday, somewhere, someone may want the evidence. So, even though South Carolina deregulated schools no longer must keep Basic Skills Assessment Program records for students not requiring special help, there are indications that many still do. Perhaps they will give up this vigilance over time, but it appears that more needs to be done to assure school personnel that such extensive documentation is really not necessary and may detract from their other responsibilities. And, exempting some schools does not necessarily prompt the state to address the larger question of whether its monitoring system adequately measures compliance with the purposes of statute and regulation. In fact, although there is no evidence of this in our study, exempting some schools may make state officials more complacent about traditional monitoring approaches because those most likely to chafe and most sophisticated in expressing their complaints are no longer subject to it.

The ability of differential treatment strategies to address the larger questions of appropriate oversight and state leadership is a fitting lead-in to our final conclusion. The consequences of differential treatment strategies are highly dependent on their design. Takeover programs designed to focus on district management appear to have little impact on schools, at least in the initial year or so of operation; programs crafted to focus on assistance to schools might, on the other hand, contribute to educational improvement. Deregulatory programs that feature automatic exemption seem more stimulative of creative thinking, other things being equal, than rule-by-rule request programs. Furthermore, the effects of the approaches are highly dependent on other aspects of state policy. The consequences of intervention strategies depend, for example, on the capacity of the state agency, on whether it can assist or broker meaningful help. The stimulus provided by deregulation depends on the extent to which regulation in the state is viewed as intrusive.

Differential treatment strategies should be components of an overall state plan for improving education. State determination of the goals it wishes to achieve and orchestration of various policy instruments around those goals is the foundation. Differential treatment is a strategy for accommodating local diversity in meeting the goals, not a substitute for clear goals and appropriate policy mechanisms. Unless states are clear about how intervention in troubled districts and schools can help those districts meet state goals, intervention is likely to be a symbolic gesture at best and a trauma with more detractions than benefits at worst. Unless states determine how process deregulation might help various types of schools better meet state goals, they will likely restrict programs so few schools benefit and the most potentially needy are ineligible. Differential treatment must be part of a systemic reform strategy that includes a review of how state agency resources can be best used. While not a panacea, differential treatment is worth continued experimentation and study in the context of multi-faceted reform of education.

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